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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 ROBERT A. DANIELS, )

8 Plaintiff, )

9 vs. )

10 MARC S. JENSON, *et al.*, )

11 Defendants. )

Case No. 2:11-cv-00298-JCM-CWH

**ORDER**

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13 This matter came before the Court on Plaintiff Robert A. Daniels' Motion for Reasonable  
14 Fees and Expenses Against Defendant Marc. S. Jenson (#72), filed on March 25, 2013. No  
15 response was submitted by Defendant Marc. S. Jenson.<sup>1</sup>

16 **BACKGROUND**

17 On February 12, 2013, Plaintiff Robert A. Daniels ("Daniels") filed a Motion to Strike  
18 Marc S. Jenson's ("Jenson") Answer to Complaint and for Discovery Sanctions (#68). The  
19 Court granted Daniels' Motion on March 11, 2013 and recommended that Jenson's Answer be  
20 stricken. In doing so, the Court ordered Daniels to submit a Motion/Application for Reasonable  
21 Fees and Expenses in accordance with Local Rule 54-16 by March 25, 2013. The Court will now  
22 review that Motion.

23 **DISCUSSION**

24 **A. Sanctions Pursuant to Rule 37**

25 Federal Rule of Civil Procedure 37(c) states, "If a party fails to provide information or  
26 identify a witness as required by Rule 26(a) or (e) . . . the court . . . may order payment of  
27 reasonable expenses, including attorney's fees, caused by the failure." Jenson failed to submit a  
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<sup>1</sup> Local Rule 7-2(d) states, "The failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion."

1 response to this Motion for Attorney Fees. Accordingly, Jenson has not met his burden to  
 2 demonstrate that his conduct was substantially justified or an award of fees would be unjust.  
 3 Therefore, the Court finds that Daniels is entitled to attorney fees pursuant to Rule 37(c).

#### 4 **B. Reasonableness of the Fee Request**

5 The Ninth Circuit affords trial courts broad discretion in determining the reasonableness  
 6 of fees. *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9<sup>th</sup> Cir. 1992). Courts typically follow a  
 7 two-step process. *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9<sup>th</sup> Cir. 2000). First, the Court  
 8 must calculate the lodestar amount “by taking the number of hours reasonably expended on the  
 9 litigation and multiplying it by a reasonable hourly rate.” *Id.* Second, the Court “may adjust the  
 10 lodestar upward or downward using a ‘multiplier’ based on factors not subsumed in the initial  
 11 calculation.” *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9<sup>th</sup> Cir. 2000).  
 12 Some of the relevant factors are: (1) the time and labor required, (2) the novelty and difficulty of  
 13 the questions involved, (3) the skill requisite to perform the legal service properly, (4) the  
 14 preclusion of other employment by the attorney due to acceptance of the case, (5) the customary  
 15 fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the  
 16 circumstances, (8) the amount involved and results obtained, (9) the experience, reputation, and  
 17 ability of the attorney, (10) the undesirability of the case,<sup>2</sup> (11) the nature and length of the  
 18 professional relationship with the client, and (12) awards in similar cases. *Kerr v. Screen Extras*  
 19 *Guild, Inc.*, 526 F.2d 67, 69-70 (9<sup>th</sup> Cir. 1975), *cert. denied*, 425 U.S. 951 (1976); *see also*  
 20 *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). In most cases, the lodestar figure is a  
 21 presumptively reasonable fee award. *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 978  
 22 (9<sup>th</sup> Cir. 2008).

#### 23 **1. Reasonable Hourly Rate**

24 The Supreme Court has held that reasonable attorney fees must “be calculated according  
 25 to the prevailing market rates in the relevant community.” *Blum v. Stenson*, 465 U.S. 886, 895-96

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 27 <sup>2</sup>This factor has been called into question by the Supreme Court’s ruling in *City of Burlington*  
 28 *v. Dague*, 505 U.S. 557, 561-564 (1992). *See also Davis v. City & Cty. of San Francisco*, 976 F.2d  
 1536, 1546 n.4 (9<sup>th</sup> Cir. 1992), *vacated in part on other grounds*, 984 F.2d 345 (9<sup>th</sup> Cir. 1993)  
 (suggesting *Dague* casts doubt on the relevance of “undesirability” to the fee calculation).

n.11 (1984). The relevant community consists of the forum in which the case is pending. *Camacho*, 523 F.3d at 978. The court may consider rates outside the forum if local counsel was unavailable because they lacked the degree of experience, expertise, or specialization required to properly handle the case. *Id.* (citing *Barjon v. Dalton*, 132 F.3d 496, 500 (9<sup>th</sup> Cir. 1997)). Additionally, the court must consider the market rate in effect within two years of the work performed. *Bell v. Clackamas County*, 341 F.3d 858, 869 (9<sup>th</sup> Cir. 2003). The fee applicant has the burden of producing satisfactory evidence that “the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Id.* Such evidence may include affidavits of the fee applicant’s attorneys, affidavits of other attorneys regarding prevailing fees in the community, and rate determinations in other cases. *Camacho*, 523 F.3d at 980 (citing *United Steel Workers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9<sup>th</sup> Cir. 1990)). Daniels seek fees based on an hourly rate of \$300, reduced to \$125 an hour if the contingency fee provision in the retainer agreement is activated. Jenson raised no objection to this rate and the Court finds that it is reasonable for this forum.

## 2. Reasonable Hours Expended

In addition to evidence supporting the rates claimed, “[t]he party seeking an award of fees should submit evidence supporting the hours worked.” *Hensley*, 461 U.S. at 433; *see also Jordan*, 815 F.2d at 1263. “Where the documentation of hours is inadequate, the district court may reduce the award accordingly.” *Hensley*, 461 U.S. at 433. “The district court also should exclude from this initial fee calculation hours that were ‘not reasonably expended’.” *Hensley*, 461 U.S. at 433-34 (citation omitted). “In other words, the court has discretion to ‘trim fat’ from, or otherwise reduce, the number of hours claimed to have been spent on the case.” *Edwards v. Nat’l Business Factors, Inc.*, 897 F. Supp. 458, 460 (D. Nev. 1995) (quotation omitted); *see also Gates v. Deukmejian*, 987 F.2d 1392, 1399 (9<sup>th</sup> Cir. 1992). In cases where the motion is granted in part and denied in part, the Court may apportion the reasonable expenses for the motion. Fed. R. Civ. P. 37(a)(5)(c).

Daniels failed to submit an itemization of the hours expended in prepared the Motion to Strike and for Discovery Sanctions (#68) in accordance with Local Rule 54-16. He indicates that

1 a Bill of Costs will be submitted within fourteen (14) days of the entry of Default against Jenson  
2 and in total, Jenson's attorney has spent 179.6 hours on this action. However, nowhere in the  
3 Motion does Daniels describe the number of hours expended specifically for the Motion to Strike  
4 at issue. As a result, the Court is unable to determine if the number of hours expended were  
5 reasonable. Additionally, it is unable to determine how much Jenson should be ordered to pay  
6 Daniels under Rule 37(c). Therefore, the Court will deny Daniels' Motion without prejudice.

7 Based on the foregoing and good cause appearing therefore,

8 **IT IS HEREBY ORDERED** that the Plaintiff Robert A. Daniels' Motion for  
9 Reasonable Fees and Expenses Against Defendant Marc. S. Jenson (#72) is **denied without**  
10 **prejudice.**

11 DATED this 15th day of April, 2013.

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15 **C.W. Hoffman, Jr.**  
16 **United States Magistrate Judge**  
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